IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 11TH JANUARY 2007 / 21ST PAUSHA 1928

Crl.MC.No. 3865 of 2006()

Crl.M.C.No.600/2006 of the Sessions Court, Manjeri in
Crime No.149/2006 of Perinthalmanna Police Station

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PETITIONER:

MUHAMMED BINISH, S/O.ABOOBACKER,
AGED 22 YEARS, MOOCHIKADAN HOUSE,
ORTHUKKUNGAL P.O., KOTTAKKAL VIA.,
MALAPPURAM DISTRICT.

BY ADV. SRI.K.M.SATHYANATHA MENON

RESPONDENTS:

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1. THE SUB INSPECTOR OF POLICE,
KARUVARAKKUNDU POLICE STATION,
MALAPPURAM DISTRICT.

2. THE STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

3. THE PUBLIC PROSECUTOR,
COURT OF SESSIONS JUDGE, MANJERI,
MALAPPURAM DISTRICT.

4. ATHEKKADAN SAINABHA, W/O.ABOOBACKER
CHETTIYAMTHODI HOUSE, THARISSU P.O.,
KANNATH, C.T.ROAD, MALAPPURAM DISTRICT.

BY PUBLIC PROSECUTOR SRI.K.A.AKBAR
SRI.SOJAN MICHEAL

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 11/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.3865 of 2006

Dated this the 11th day of January, 2007

ORDER

The petitioner is the brother of the deceased and the defacto complainant/informant/complainant in a crime registered under Section 498 A, 304 B read with 34 I.P.C. The sister of the petitioner was married to the son of the respondent. The sister of the petitioner committed suicide on 25.10.2006 at her matrimonial home. F.I statement was lodged later on 25.10.2006 itself in which a detailed narration is made about the alleged culpable conduct of the husband of the deceased and her mother-in-law. It is alleged that the deceased was vexed and harassed by demand for dowry and that she was constrained to leave her matrimonial home and to return to her parental home. Her husband was employed abroad. After he returned, there was a talk of mediation and the deceased was taken to her matrimonial home again on the promise that there shall be no vexation or harassment. It is the further allegation that thereafter also demand for amounts continued and an agreement was reached that further amounts shall be paid. On the date prior to the date of suicide, the deceased is alleged to have called her father over the telephone and complained of harassment meted out to her at her matrimonial home. The father and relatives of the deceased were

preparing to proceed to the matrimonial home of the deceased on the next morning when they got information that she had attempted to commit suicide. She expired later on the same date. The crime was registered as stated earlier under Section 498 A and 304 B I.P.C on 25.10.06. The pettioner applied for anticipatory bail before the learned Sessions Judge and the learned Sessions Judge on 2.11.06 – within a week of the offence, granted blanket directions under Section 438 Cr.P.C in favour of the respondent/2nd accused.

2. Aggrieved by the grant of anticipatory bail to the respondent/2nd accused, the petitioner has come to this Court with this Crl.M.C for cancelling the bail granted to the respondent/2nd accused.

3. Notice was given to the respondent. She has entered appearance through counsel. I have heard the learned counsel for the petitioner, the learned counsel for the respondent as also the learned Public Prosecutor.

4. The learned counsel for the petitioner contends that there has been heartless grant of anticipatory bail to the respondent making mockery of the criminal justice system. Even the Public Prosecutor was not acting fairly and properly in conceding that the State has no objection against the grant of anticipatory bail. In the facts and circumstances of the case, the accused must have been held to be not entitled for anticipatory bail. At least the learned Sessions Judge must have directed the respondent/2nd accused to seek bail in the

regular and ordinary course before the learned Magistrate. Blanket direction for anticipatory bail has been granted without imposing any obligation on the respondent to surrender before the learned Magistrate. The learned Magistrate has been by-passed. Virtually there has been no consideration on merits of the right of the respondent to regular bail.

5. The counsel for the petitioner submits that the learned Sessions Judge did not even take note of the fact that the prosecution is under Section 304 B I.P.C. The learned Sessions Judge does not appear to have considered the entire materials available. The mere fact that a suicide note is available in which it is stated that no one is responsible for the death should not have weighed with the learned Sessions Judge to grant anticipatory bail. The want of opposition on the part of the Prosecutor should not also in these circumstances have persuaded the learned Sessions Judge to grant anticipatory bail. It is further pointed out that the learned Sessions Judge has granted a blanket order of anticipatory bail without directing the respondent to appear before the learned Magistrate to seek regular bail. This is in violation of the decision in **Adri Dharan Das v. State of West Bengal** [(2005) 4 SCC 303].

6. The learned counsel for the respondent on the contrary submits that there are no circumstances whatsoever which would

justify the cancellation of bail granted to the respondent, a woman, aged about 52 years, who is sick also. The counsel points out that the learned Sessions Judge had applied her mind to the fact that there is a suicide note in which the deceased had expressed that no person is responsible for her suicide. The learned counsel for the petitioner further submits that the prosecutor in his informed discretion appears to have conceded before the learned Sessions Judge that the State has no objection against grant of anticipatory bail. He further points out that the order reveals that the case diary had been placed before the learned Sessions Judge. The counsel further points out that blanket directions were not issued and bail was granted subject to very strict conditions. The accused was granted the option either to appear before the learned Magistrate or the Investigating Officer and in both events she was directed to be released on bail subject to identical conditions. The learned counsel for the petitioner points out that the principles which applied at the time of grant of bail and the principle which ought to apply when an application for cancellation of bail is considered, are totally different. Cancellation of bail is one of the most harsh remedies which law stipulates. At any rate, there is no reason to resort to such course in so far as the petitioner, a woman, aged 52 years, is concerned, it is urged. Counsel further points out that subsequent to the order passed, the respondent had surrendered

before the Investigating Officer and has been enlarged on bail in terms of the direction issued in the impugned order.

7. I have no hesitation to agree with the learned counsel for the petitioner herein that the allegations raised in the F.I statement are shocking and exceptional. The sequence of events narrated in the case really reveal the gravity of the alleged offences committed. In such a case, even before investigation has made any significant progress, courts must be careful before arming an accused with a blanket order of anticipatory bail. At that stage, sufficient materials would not be available and would not have been collected. The Investigator/Prosecutor would be disabled from placing all relevant circumstances before the learned Sessions Judge. The alleged suicide took place on 25.10.2006 and anticipatory bail order is seen passed on 2.11.06. In the nature of the allegations raised, I have no hesitation to agree that the learned Sessions Judge must have been more careful and cautious before taking the decision, even in the wake of absence of the opposition by the learned prosecutor in permitting the accused to be armed with such an order of anticipatory bail. There can be no doubt that the gravity of the allegations is a relevant and crucial input while exercising the discretion to grant anticipatory bail under Section 438 Cr.P.C.

8. The accused is a woman, aged about 52 years. But even in such a case, the learned Sessions Judge, I am satisfied, must have given the prosecution time to collect the relevant data and place the same before the Magistrate considering the regular bail application. This, I am satisfied, was an eminently fit case, where the court would have been justified in passing an order limited by him and should not have passed a blanket order of anticipatory bail unlimited by time. The learned Sessions Judge, I am satisfied, should have granted anticipatory bail limited by time and must have directed the learned Magistrate to consider a regular bail application to be filed by the respondent within such period of time on merits and in accordance with law.

9. I do not intend to express any opinion on the entitlement of the respondent/2nd accused for bail. But I am certainly satisfied that the petitioner must appear before the learned Magistrate and seek regular bail and the learned Magistrate must consider such application for regular bail on merits and in accordance with law after hearing the submissions of all concerned and after considering the nature and extent of materials which have by now been collected. An order on merits uninfluenced by the order granting anticipatory bail or any observations made in this order must be passed by the learned Magistrate. I am, in these circumstances, satisfied that though the

order granting anticipatory bail, notwithstanding the fact that the directions have specifically been complied with, do not deserve to be cancelled but deserves to be modified and it must be insisted that the respondent/2nd accused appears before the learned Magistrate and seeks regular bail in the ordinary course. The respondent shall appear before the learned Magistrate on 22.01.2007. Notice of application for regular bail can be given to the prosecutor sufficiently early. The learned Magistrate shall consider the application for regular bail on merits and in accordance with law on 22.01.2007 and pass appropriate orders on merits on that day itself. To the above extent, this Crl.M.C is, allowed and the impugned order is modified.

10. Hand over a copy of this order to the learned counsel for the respondent/2nd accused.

(R.BASANT, JUDGE)

rtr/-